

No. 12,595

IN THE

United States Court of Appeals  
For the Ninth Circuit

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ROBERT STROUD,

*Appellant,*

VS.

E. B. SWOPE, Warden, United States  
Penitentiary, Alcatraz, California,

*Appellee.*

BRIEF FOR APPELLEE.

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**BRIEF FOR APPELLEE.**

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**JURISDICTIONAL STATEMENT.**

The method by which appellant (an inmate of the United States Penitentiary at Alcatraz, California) seeks to invoke the jurisdiction of the United States District Court for the Northern District of California, hereinafter called "the Court below", and the jurisdiction of this Honorable Court, to review the decision of the Court below denying appellant's petition for injunctive relief against the appellee, the Warden of the said penitentiary, is set forth in full in the said appellant's jurisdictional statement on page 2 of his opening brief.

**STATEMENT OF THE CASE.**

The appellant, an inmate of the United States Penitentiary at Alcatraz, California, filed a pleading which he entitled, "A PETITION FOR AN INJUNCTION RESTRAINING THE RESPONDENT, E. B. SWOPE, WARDEN, FROM UNLAWFUL INTERFERENCE WITH THE LAWFUL BUSINESS INTERESTS OF THE PETITIONER OR OF DEPRIVING THE PETITIONER OF PROPERTY RIGHTS SECURED TO HIM UNDER THE CONSTITUTION AND LAWS OF THE UNITED STATES, AND OTHER REDRESS" (Tr. 2). Thereupon the Court below entered the following "Order Denying Petition for Injunction":

"The petition for injunction is denied. Treating the petition as one for the writ of habeas corpus, it is denied and the proceeding is dismissed.

Dated: March 21, 1950.

/s/ LOUIS E. GOODMAN,  
United States District Judge.

(Endorsed): Filed March 21, 1950."

(Tr. 48.) From this order appellant now appeals to this Honorable Court. (Tr. 49.)

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**QUESTION.**

Is a prisoner incarcerated in a United States Penitentiary entitled to carry on his business affairs and engage in unrestricted correspondence in furtherance thereof?

## CONTENTION OF APPELLEE.

The answer to the above stated question is: No.

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## ARGUMENT.

The application filed by the appellant to compel the appellee, E. B. Swope, Warden of the United States Penitentiary, Alcatraz, California, to allow him to carry on his business affairs and engage in unrestricted correspondence in furtherance thereof finds no sanction in the rules promulgated for the governance of inmates of penal institutions\* in accordance with the provisions of Title 18 USCA, Section 4042, which reads as follows:

“The Bureau of Prisons, under the direction of the Attorney General, shall—

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\*Paragraph 2 of Section b at pages 2 and 3 of Manual Bulletin No. 96, dated February 23, 1944, issued by the Director of the Bureau of Prisons of the Department of Justice of the United States of America reads as follows:

“(2) Non-Relatives—

Ordinarily, inmate correspondence with friends, business associates, and other persons outside the family may be permitted whenever it does not appear that rehabilitation will adversely be affected or that it will be detrimental to the well-being of the inmate or his correspondent. Correspondence with business associates, of course, must be limited to social matters. *An inmate cannot be permitted to direct his business, no matter how legitimate it may be, while he is in prison.* But this does not go to the point of prohibiting correspondence necessary to enable the inmate to protect and husband the property and funds that were legitimately his at the time he entered the institution. Thus a prisoner could correspond about refinancing a mortgage on his home or sign insurance papers, but he could not operate a mortgage or insurance business while in the institution.”

(1) have charge of the management and regulation of all Federal penal and correctional institutions;

(2) provide suitable quarters and provide for the safekeeping, care, and subsistence of all persons charged with or convicted of offenses against the United States, or held as witnesses or otherwise;

(3) provide for the protection, instruction, and discipline of all persons charged with or convicted of offenses against the United States.

This section shall not apply to military or naval penal or correctional institutions or the persons confined therein."

Certainly the actions of the Warden in denying appellant's requests are in no sense an abrogation of a personal right or a constitutional guaranty. Under such circumstances the remedy sought by the appellant will not lie.

See:

*DeCloux v. Johnston*, 70 Fed. Supp. 718;

*Sanders v. Johnston* (C.C.A. 9), 159 F. (2d) 74;

*Numer v. Miller* (C.C.A. 9), 165 F. (2d) 986;

*Sanders v. Swope* (C.C.A. 9), 176 F. (2d) 311,

and the authorities cited in these cases.

In the *Numer* case, attention is particularly called to the fact that it was conceded by the Warden that Numer was not permitted to take a correspondence course in English at the University of California,



while to certain other inmates this privilege was given. In this latter case the Court said:

“Patently there is nothing in this showing which would make out a case cognizable by the district courts. It is not their province to supervise prison discipline. *Platek v. Aderhold*, 5 Cir., 73 F. 2d 173. Congress has entrusted that responsibility to the Bureau of Prisons, set up in the Department of Justice. The controlling statute, 18 U.S.C.A. § 753a, provides, that the Bureau ‘shall have charge of the management and regulation of all Federal penal and correctional institutions and be responsible for the safe-keeping, care, protection, instruction, and discipline of all persons charged with or convicted of offenses against the United States’ ”.

See, also:

*Snow v. Roche (Judge)*, 143 F. (2d) 718, certiorari denied, 323 U.S. 788.

Furthermore, it is well settled that it is not the function of the Court to superintend the treatment and discipline of prisoners in penitentiaries, but only to deliver from imprisonment those who are illegally confined.

*Sarshik v. Sanford* (C.C.A. 5), 142 F. (2d) 676;

*Platek v. Aderhold* (C.C.A. 5), 73 F. (2d) 173, 175;

*Kelly v. Dowd* (C.C.A. 7), 140 F. (2d) 81, 83, certiorari denied, 320 U.S. 786.

See, also:

*Hauck v. Hiatt*, 50 Fed. Supp. 917;

*Crites v. Hill*, 9 Fed. Supp. 975.

Assuming, arguendo, that there is possible merit in the appellant's complaint, the action is one that should be filed against the appellee's superiors in the District of Columbia for it was they who promulgated the rules that the appellee of necessity, must carry out and is properly carrying out in relation to the activities of the appellant. That there has been no abuse of discretion by the prison authorities is clearly evidenced by the language of the petition itself.

But regardless of where and against whom the action will lie, mere practical consideration alone would reason against the granting to appellant of the relief for which he prays. It is clear such a precedent would open the door to a flood of applications from Federal prisoners and seriously hamper the administration of our prison system. The Court below refused to establish such a precedent. This Honorable Court is urged to do likewise.

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### CONCLUSION.

In view of the foregoing, it is respectfully submitted that the order of the Court below is correct and should be affirmed.

Dated, San Francisco, California,  
December 6, 1950.

FRANK J. HENNESSY,  
United States Attorney,

JOSEPH KARESH,

Assistant United States Attorney,

*Attorneys for Appellee.*